The Lautenberg Amendment

Deputy, Military Law Branch
Judge Advocate Division
HQMC (703)614-4250

Domestic violence is incompatible with military service

LAUTENBERG AMENDMENT

Overview

- The Gun Control Act of 1968
  - Denied Felons ability to possess firearms
  - Public Interest Exception
    - Exempted state and federal employees
    - Duty related possession only
- The 1994 Amendment

  -Protective orders – notice and court finding requirements

Overview cont'd

- The Lautenberg Amendment - 1996
  - Amended the Gun Control Act of 1968
  - Makes it a felony for anyone
    - convicted of a "misdemeanor crime of domestic violence" to ship, receive, or possess firearms or ammunition
    - for anyone to provide firearms/ammunition to someone known to have a conviction for domestic violence
  - Revoked the public interest exception to Gun Control Act for misdemeanor convictions of DV

Purpose of Amendment

- To get and keep firearms out of the hands of those individuals with domestic violence convictions.
- “All too often the difference between a battered woman and a dead woman is the presence of a gun.” – Sen. Frank Lautenberg

No Military Exception

- There is no military or law enforcement exception to the Lautenberg Amendment or Gun Control Act
- Not an oversight
- Retroactive application (no grandfather clause)

18 U.S.C. §922(d)(9)

- It shall be unlawful for <u>any</u> person
  - to sell or otherwise dispose of any firearm or ammunition to any person, knowing or having reasonable cause to believe that such person has been convicted in any court of a misdemeanor crime of domestic violence.
  - APPLIES TO EVERYONE HERE!

LAUTENBERG AMENDMENT

18 U.S.C. §922(g)(9)

- It shall be unlawful for any person
  - who has been convicted in any court of a misdemeanor crime of domestic violence,
  - to ship, transport, or possess any firearm or ammunition;
  - or to receive any firearm or ammunition

18 U.S.C. §921(a)(33)

- Misdemeanor crime of domestic violence means an offense that--
  - is a misdemeanor under Federal or State law; and
  - has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon
  - against a “domestic victim”

What is a Misdemeanor?

- Defined by Federal or State Law
  - UCMJ offenses are not classified as misdemeanor or felony
  - Courts-martial are NOT classified as misdemeanor or felony

What is a “Conviction” ?

- Determined by State or Federal law
- “Nolo Contendere” pleas
  - same effect as a plea of guilty for sentencing but may not be considered as an admission of guilt for any other purpose.
- Does NOT include deferred prosecutions or similar alternative dispositions.
- Does NOT include NJP or Summary Court-Martial
- Does NOT include CRC findings

Due Process Threshold:

- Qualifying conviction requires person to be:
  - Represented by counsel (or knowingly/intelligently waived), and
  - If entitled to jury trial, convicted by jury or knowingly/intelligently waived

Offender/Victim relationship

- **Domestic violence occurs when the offender is:**
  - the current spouse of the victim
  - the former spouse of the victim
  - the parent of the victim
  - the guardian of the victim
  - shares a common child with the victim
  - someone who is cohabitating as a spouse, parent, or guardian
  - someone who used to cohabitate as a spouse, parent or guardian
  - Someone similarly situated has a spouse, parent, or guardian of the victim

Bottom Line

- Anyone who commits a misdemeanor crime:
  - That involves "Domestic Violence"
  - And is subsequently convicted of this crime
  - Whether recently or in the past (no grandfather clause)
- Cannot own, possess, or be issued weapons/ammunition
  - even in the line of duty!
- *Expunged or set aside convictions

DoD Policy

- Current policy approved and effective on 27 Nov 02
- Policy applies to felony* and misdemeanor crimes of domestic violence, and general and special courts-martial that otherwise meet the definition of “crime of domestic violence.”
- Two separate memorandums (civilian and military)
- DoD Directive/Instruction in process

DoD Policy (generally)

- Must periodically inform personnel of amendment, consequences, and DoD policy.
- Actions and policy applies OCONUS
- Military and civilian personnel have an "affirmative, continuing obligation" to notify command/supervisor of qualifying conviction.
  - That they currently have or later obtain - requires use of DD Form 2760
  - Unit-wide distribution of DD Form 2760 not appropriate. Provide ONLY if reasonable suspicion of qualifying conviction

QUALIFICATION TO POSSESS FIREARMS OR AMMUNITION

PRIVACY ACT STATEMENT

AUTHORITY: 18 U.S.C. 922(g)(9); E.O. 9397.

PRINCIPAL PURPOSE(S): To obtain information to determine if you have been convicted of a crime of domestic violence which would disqualify you from shipping, transporting, possessing or receiving either Government-issued or private firearms or ammunition and to determine if reassignment, reclassification, detail or other administrative action is warranted. Your Social Security Number is solicited solely for purposes of verifying your identity.

ROUTINE USE(S): To the Department of Justice so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are qualified to receive or possess firearms and ammunition.

DISCLOSURE: Mandatory for all personnel who are required to certify. Failure to provide the information may result in (1) (military only) the imposition of criminal or administrative penalties for failing to obey a lawful order, and (2) (civilian only) the imposition of administrative penalties, to include removal from Federal service. However, neither your answers nor information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9), including (military only) prosecutions under the Uniform Code of Military Justice, based on a violation of Section 922(g)(9), for conduct which occurred prior to the completion of this form. The answers you furnish and any information resulting therefrom, however, may be used against you in a criminal or administrative proceedings if you knowingly and willfully provide false statements or information.

SECTION I - INSTRUCTIONS

An amendment to the Gun Control Act of 1968 (18 U.S.C. 922) makes it a felony for anyone who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. It is also a felony for any person to sell or otherwise dispose of a firearm to any person so convicted.

The Department of Defense has, by policy, expanded the prohibitions contained in Title 18 Section 922(g)(9) to those military or civilian personnel who have felony convictions for crimes of domestic violence. Convictions of crimes of domestic violence do not include summary court-martial convictions, the imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in civilian courts. Furthermore, a person shall not be considered as having committed a "crime of domestic violence" for purposes of the firearms restriction of the Gun Control Act unless all of the following elements are present:

(1) the person was convicted of a crime;

(2) the offense has as its factual basis the use or attempted use of physical force, or threatened use of a deadly weapon;

(3) the convicted offender was at the time of the offense:
- (a) a current or former spouse, parent or guardian of the victim,
- (b) a person with whom the victim shared a child in common,
- (c) a person who was cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or
- (d) a person who was similarly situated to a spouse, parent, or guardian of the victim;

(4) the convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel;

(5) if entitled to have the case tried by jury, the case was actually tried by jury or the person knowingly and intelligently waived the right to have the case tried by jury;

(6) the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense or had civil rights restored, unless the pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess or receive firearms.

If you have ever received a domestic violence conviction: (1) you may not possess any firearm or ammunition; and (2) you must return any Government-issued firearm or ammunition to your commander or immediate supervisor; and (3) you must take steps to relinquish possession of any privately owned firearms or ammunition. Furthermore, any previously issued authorization to possess a firearm or ammunition is revoked.

If you have any questions, or you are uncertain if you have such a conviction, you may wish to contact a legal assistance attorney, if eligible, or a private attorney, at your own expense.

SECTION II - QUALIFICATION INQUIRY *(Complete and return to your commander or immediate supervisor within 10 days of receipt)*

1. HAVE YOU EVER BEEN CONVICTED OF A CRIME OF DOMESTIC VIOLENCE AS DESCRIBED ABOVE: *(Initial and date)*

YES	NO	I DON'T KNOW *(Provide explanation on reverse)*

2. IF YOU ANSWERED "YES" TO THE FIRST QUESTION, PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO THE CONVICTION:

a. COURT/JURISDICTION	b. DOCKET/CASE NUMBER
c. STATUTE/CHARGE	**d. DATE SENTENCED** *(YYYYMMDD)*

3. CERTIFICATION. I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for criminal and/or administrative proceedings, to include (if civilian) adverse action, up to and including removal, and (if military) disciplinary action under the Uniform Code of Military Justice. I further understand that I have a continuing obligation to inform my Commander or Supervisor should I be convicted of a crime of domestic violence in the future.

a. NAME *(Last, First, Middle Initial)*	b. RANK/GRADE	c. SOCIAL SECURITY NUMBER
d. ORGANIZATION	**d. SIGNATURE**	**e. DATE SIGNED** *(YYYYMMDD)*

DD FORM 2760, DEC 2002 PREVIOUS EDITION IS OBSOLETE.

Reset

DoD Policy for Military

- Qualifying conviction bars applicants from military service and for current members:
- Requires retrieval and suspension of access to firearms and ammunition
- If qualifying conviction is learned while deployed, continue mission. Once off deployment weapon/ammo access prohibited.

- Major weapons systems are excluded from the definition of firearms and ammunition (tanks, crew-served weapons, aircraft, etc.)

DoD Policy for “Covered” Employees

- Requires Services to identify all “covered” civilian employees
  - positions that include duties under Gun Control Act, including selling, disposing, receiving, possessing, shipping or transporting firearms and ammunition.
  - Requires use of DD Form 2760.
- Personnel with qualifying conviction cannot be assigned or detailed to covered position.

Reminder

LAUTENBERG restrictions do not apply to:

- Summary Courts-Martial
- Article 15/NJP/Office Hours
- Administrative separations
- Deferred prosecutions or similar alternative dispositions
- **Case Review Committee Findings**

Service Implementation

- Marine Corps - MARADMIN 186/03
- Navy - NAVADMIN 085/98
- Air Force – HQ USAF/DPP policy memo of 20 Feb 04
- Army – HQDA message of 16 Oct 03 and DA PAM 600-8-200

MARADMIN 186/03

- Marines/Sailors have an affirmative, continuing duty to notify commanders of qualifying convictions (DD Form 2760)
- TECOM directed to modify common skills order and ITS order
- Recruiting command will screen all enlisted and officer applicants for qualifying conviction

Commander's Responsibilities

- Once Commanders know or suspect that a member has a qualifying conviction:
  - Provide DD Form 2760
  - Immediately retrieve Government issued firearms/ammunition
  - Suspend future access to Government firearms/ammunition
  - Secure access to privately owned firearms/ammunition kept on base
  - Advise member to take immediate action to lawfully dispose of the same
  - Refer member to SJA
- Commanders:
  - May process member for administrative separation
  - Shall not routinely screen for DV convictions
  - Of deployed units shall take appropriate actions upon return from deployment

Additional USMC policy

- Commander's shall continue to take appropriate measures . . to protect spouses

  and children from domestic violence
- Applies to Reserves

Armed Forces Domestic Security Act

- 10 USC 1561a – enacted 2 Dec 02
- Gives civilian protection orders full force and effect on military installations
- “Protection Orders” include temporary an final orders issued by civilian or criminal courts.

DoD Implementation

- DoD memo of 10 Nov 03 implemented this Act
- Violators of civilian protective orders risk civilian and/or military adverse action
- Commanders shall take all reasonable measures necessary to ensure orders are given full force and effect
- Commanders may issue MPO that is more restrictive

When in doubt
contact your SJA